



City of Somerville

## PLANNING, PRESERVATION & ZONING

City Hall 3<sup>rd</sup> Floor, 93 Highland Avenue, Somerville MA 02143

2022 JUN 16 A 10:51

**TO:** Kimberly Wells, City Clerk  
**FROM:** Planning, Preservation & Zoning Division Staff  
**DATE:** June 16, 2022  
**SUBJECT:** Correction of Scrivener's Errors

CITY CLERK'S OFFICE  
SOMERVILLE, MA

*Address:* 35 McGrath Highway

*Date of Decision:* May 18, 2022

*Date Filed with City Clerk:* May 31, 2022

This decision for this property filed in the City Clerk's Office on the date referenced above contained the following scrivener's errors:

- On page 2, the first paragraph references the "minimum front setback" three times; the second of those references should state "the maximum front setback" instead of "the minimum front setback", and the third of those references should state "the driveway in the frontage area" instead of "the minimum front setback."
- On page 2, the first paragraph references SZO §5.1.9.b three times; the third of those references should be to "5.17.c.ii" instead of "5.1.9.b."

This memo serves as the correction of these scrivener's errors.



City of Somerville

# **ZONING BOARD OF APPEALS**

City Hall 3<sup>rd</sup> Floor, 93 Highland Avenue, Somerville MA 02143

## **DECISION**

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**PROPERTY ADDRESS:** 35 McGrath Hwy  
**CASE NUMBER:** P&Z 21-156  
**OWNER:** Lohnes Paul R & Lavery Jr C R Trs  
**OWNER ADDRESS:** 75 Cambridge Parkway, Cambridge, MA 02142  
**DECISION:** Approved with Conditions (Hardship Variances)  
**DECISION DATE:** May 18, 2022

This decision summarizes the findings made by the Zoning Board of Appeals (the "Board") regarding the development review application submitted for 35 McGrath Hwy.

### **LEGAL NOTICE**

35 McGrath Highway Realty Trust seeks variance from the following requirements of the High Rise (HR) district: front setback requirements, driveway in the frontage area, and façade not parallel to the front lot line.

### **RECORD OF PROCEEDINGS**

On May 18, 2022, the Zoning Board of Appeals held a public hearing advertised in accordance with M.G.L. 40A and the Somerville Zoning Ordinance. Present and sitting at the public hearing were Board Members Chair Susan Fontano, Anne Brockelman, Ann Fullerton, and Acting Clerk Katherine Garavaglia. The applicant team presented an overview of their request for four Hardship Variances and explained why they believe that their request satisfies the requirements for granting the Variances. The team also reviewed the conceptual site plan and elevations of the building they plan to propose if the Variances are granted. The Board asked for public comment; two people spoke and neither objected to the request. The Board and Applicant discussed the ownership history of the triangular parcel adjacent to the front of the property, and what legal rights the Applicant has related to that parcel. The Board clarified that the Variances would only affect the Applicant's property and would not affect or be affected by any easements the Applicant may or may not have for the triangle property.

The Board discussed the exact amount of relief they were willing to grant regarding the minimum and maximum front setback, and regarding having a driveway in the frontage area. The Board determined that they were comfortable with the ground story having a larger maximum front setback than otherwise permitted, but not a smaller minimum front setback; that they were comfortable with the upper stories having a smaller minimum front setback than otherwise permitted, but not a larger maximum front setback; and that while they are comfortable with having a driveway in the frontage, the driveway should not function as the loading docks for trucks.

### **HARDSHIP VARIANCE FINDINGS**

The Applicant requested four variances for relief from the minimum front setback requirement (SZO §5.1.9.b), relief from the ~~minimum~~ maximum front setback requirement (SZO §5.1.9.b), relief from the requirement to have the façade parallel to the front lot line (SZO §2.2.4.b.i.a), and relief from the driveway in the frontage area ~~maximum front setback requirement~~ (SZO §5.17.c.ii ~~5.1.9.b~~). The Board determined that their findings for each of the four variances were the same, and so addressed them together.

In accordance with M.G.L. 40A and the Somerville Zoning Ordinance, the Board may grant a hardship variance only upon finding all of the following for each hardship variance:

1. *Special circumstances exist relating to the soil conditions, shape, or topography of a parcel of land or the unusual character of an existing structure but not affecting generally the HR zoning district in which the land or structure is located;*

For each of the four requested hardship variances, the Board finds that there are special circumstances related to the shape of the lot due to strange triangular piece that was taken through eminent domain from the front portion of the lot.

2. *Literal enforcement of the provision of this Ordinance for the district where the subject land or structure is located would involve substantial hardship, financial or otherwise, to the petitioner or appellant, 35 McGrath Highway Realty Trust, due to said special circumstances; and*

For each of the four requested hardship variances, the Board finds that due to the shape of the lot, a literal enforcement of the zoning code would result in a triangular building with a very narrow path to get to the public right of way.

3. *Desirable relief could be granted without causing substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the HR district in this Ordinance or the Ordinance in general.*

For each of the four requested hardship variances, the Board finds that designing the building to follow the frontage, rather than following the street, would make the building look out of place. Therefore, the Board finds that not only would granting the variances not cause harm, but is it desirable to grant each of the requested variances.

## DECISION

Following public testimony, review of the submitted plans, and discussion of the statutorily required considerations, Acting Clerk Garavaglia moved to approve the **HARDSHIP VARIANCES** for minimum front setback, maximum front setback, having a driveway in the frontage area, and having the façade not parallel to the front lot line. Ms.

Brockelman seconded. The Board voted **4-0** to approve the permit, subject to the following conditions:

Perpetual

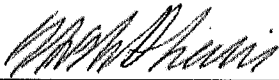
1. The minimum permitted setback for the ground story is two feet (2'). The maximum permitted setback for the ground story is thirty-four feet and four inches (34' 4").
2. The minimum permitted setback for the upper stories is zero feet (0'). The maximum permitted setback for the upper stories is fifteen feet (15').

Prior to Building Permit

3. This Decision must be recorded with the Middlesex South Registry of Deeds.
4. A copy of the recorded Decision stamped by the Middlesex South Registry of Deeds must be submitted to the Planning, Preservation & Zoning Division for the public record.
5. One (1) physical copy of the original application materials and one (1) digital and (1) physical copy of all required application materials reflecting any physical changes required by the Board, if applicable, must be submitted to the Planning, Preservation & Zoning Division for the public record.

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chair*  
Anne Brockelman  
Ann Fullerton  
Katherine Garavaglia, *Alternate*



Sarah Lewis, Director of Planning, Preservation, & Zoning  
Office of Strategic Planning & Community Development

**CLERK'S CERTIFICATE**

Any appeal of this decision must be filed within twenty days after the date this notice is filed in the Office of the City Clerk, and must be filed in accordance with M.G.L. c. 40A, sec. 17 and SZO sec. 15.5.3.

In accordance with M.G.L. c. 40 A, sec. 11, no variance shall take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

Also in accordance with M.G.L. c. 40 A, sec. 11, a special permit shall not take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and either that no appeal has been filed or the appeal has been filed within such time, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed Special Permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.

The owner or applicant shall pay the fee for recording or registering. Furthermore, a permit from the Division of Inspectional Services shall be required in order to proceed with any project favorably decided upon by this decision, and upon request, the Applicant shall present evidence to the Building Official that this decision is properly recorded.

This is a true and correct copy of the decision filed on \_\_\_\_\_ in the Office of the City Clerk, and twenty days have elapsed, and

**FOR VARIANCE(S) WITHIN**

\_\_\_\_\_ there have been no appeals filed in the Office of the City Clerk, or  
\_\_\_\_\_ any appeals that were filed have been finally dismissed or denied.

**FOR SPECIAL PERMIT(S) WITHIN**

\_\_\_\_\_ there have been no appeals filed in the Office of the City Clerk, or  
\_\_\_\_\_ there has been an appeal filed.

**FOR SITE PLAN APPROVAL(S) WITHIN**

\_\_\_\_\_ there have been no appeals filed in the Office of the City Clerk, or  
\_\_\_\_\_ there has been an appeal filed.

Signed \_\_\_\_\_ City Clerk Date \_\_\_\_\_